IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

TUESDAY, THE 4TH SEPTEMBER 2007 / 13TH BHADRA 1929

OP.No. 12457 of 2002(G)

PETITIONER:

SMT.B.RADHAMONY, RETIRED JOINT R.T.O.,
SURABHI, SOUTH KOCHUMURI. OACHIRA P.O.,
KOLLAM.

BY ADV. SRI.C.P.SUDHAKARA PRASAD,
SRI.ELVIN PETER P.J.

RESPONDENTS:
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1. **STATE OF KERALA, REP. BY THE**
   PRINCIPAL SECRETARY TO GOVT., TRANSPORT DEPARTMENT
   GOVT. SECRETARIAT, THIRUVANANTHAPURAM.

2. **THE TRANSPORT COMMISSIONER,**
   TRANSPORT DEPARTMENT, SECRETARIAT,
   THIRUVANANTHAPURAM.

3. **THE DIRECTOR, HEALTH SERVICES,**
   SECRETARIAT, THIRUVANANTHAPURAM.

BY GOVERNMENT PLEADER SMT. T.B. RAMANI.

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 04/09/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON C.M.P. NO. 21257/2002 IN O.P. NO. 12457/2002

DISMISSED

04/09/2007. **SD/- THOTTATHIL B.RADHAKRISHNAN, JUDGE.**

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P.1: COPY OF THE CERTIFICATE DTD. 08/11/99 ISSUED BY THE MEDICAL OFFICER, POLICE HOSPITAL, KOLLAM.

EXT.P.2: COPY OF THE CERTIFICATE DTD. 14/01/2000 ISSUED BY THE CONSULTING CARDIOLOGIST OF SUT HOSPITAL.

EXT.P.3: COPY OF THE GOVT. ORDER DTD. 05/04/2000.

EXT.P.4: COPY OF THE DISCHARGE SUMMARY ISSUED BY SUT HOSPITAL.

EXT.P.5: COPY OF THE LETTER DTD. 06/07/2000 ISSUED BY R.3.

EXT.P.6: COPY OF THE ORDER DTD. 08/08/2000 ISSUED BY R.2.

EXT.P.7: COPY OF THE REPRESENTATION DTD. NIL. SUBMITTED BY THE PETITIONER.

EXT.P.8: COPY OF THE ORDER DTD. 18/01/2002 ISSUED BY R.1.

EXT.P.9: COPY OF THE GOVT. ORDER DTD. 27/04/2000.

RESPONDENT'S EXHIBITS: NIL.

//TRUE COPY//

P.S. TO JUDGE.

prv.

THOTTATHIL B. RADHAKRISHNAN, J.

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O.P.No.12457 of 2002-G

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Dated this the 4th day of September, 2007.

JUDGMENT

"CR"

1. The petitioner, while working as the Joint Regional Transport Officer, Kollam, suffered a cardiac episode leading to Ext.P1 being issued by the Medical Officer of the Police Hospital, Kollam on 8-11-1999 advising her to see a cardiologist of a major hospital where there is facility for further investigation and management. On 14-1-2000, the Head of the Division of Cardiology of the Sree Uthradom Thirunal Hospital, the credibility of which institution is not challenged by the Government, issued Ext.P2 certifying that the petitioner has suffered coronary artery disease and requires urgent coronary bypass surgery and the total costs of that would come to Rs.1,10,000/-. That document was, obviously, acted upon

by the Government which led to a final decision by the Government granting her reimbursement to the extent of Rs.55,000/- for the surgery that saved her as reflected by the discharge summary Ext.P4.

2. The short issue that arises for decision is as to whether the petitioner is entitled to reimbursement of the entire amount of Rs.1,10,000/- as claimed by her or that the reimbursement would stand confined to Rs.55,000/- as already extended by the Government.

3. GO(P)No.45/97/H&FWD dated 18-2-1997, relied on by the writ petitioner reflects the policy decision of the Government accepting the recommendations of the 5th Pay Commission regarding medical attendance and to, accordingly, amend the Kerala Government Servants Medical Attendance Rules, 1960, hereinafter referred to as the "Rules", which are issued under Article 309 of the

Constitution of India.

4. In support of the claim of the petitioner, reference is made to GO(P).45 which has enumerated Sree Uthradom Thirunal Hospital, Thiruvananthapuram as a centre where the facility of coronary artery bypass surgery is available, with an approximate expenditure of Rs.1 lakh. It has to be immediately recalled that the said Government Order was issued on 18-2-1997 while the episode leading to the surgery of the petitioner was in 2000. Reference is also made to the decision of the Apex Court in **Surjit Singh v. State of Punjab** [(1996) 2 SCC 336] and **State of Punjab v. Ram Lubhaya Bagga** [(1998) 4 SCC 117] to contend that in the backdrop of Article 21 of the Constitution and also that of Article 14, it is impermissible for the State Government to refuse the petitioner the relief claimed by her.

5. The learned Government Pleader, on the other hand, argued that GO(P).45 is merely an executive order of the Government under Article 166 of the Constitution and that the statutory rules issued under Article 309 are yet to be amended and unless such amendment is brought to the Rules, the petitioner is not entitled to claim the benefit of GO(P).45, as a matter of right.

6. It is not in dispute that the petitioner had spent much more than Rs.1,10,000/- that was claimed by her. The episode was in 2000. GO(P).45 is dated 18-2-1997. That reflects the approximate costs for coronary by-pass surgery as Rs.1 lakh. It would only be reasonable to assume that such amount which is treated as approximate in 1997 February, could well be treated as, at least, Rs.1,10,000/- as claimed by the petitioner.

7. On to the legal issue raised, G.O.(P).45 is an executive

decision. That reflects the policy of the Government by which it has accepted, to that extent, recommendations in the report of the 5th Pay Commission. It had thereby expressed the political will and policy of the Government to amend the Rules by incorporating the benefits that are stated in G.O.(P).45. None of the benefits intended to be extended thereby, runs contrary to the provisions in the Rules issued under Article 309 of the Constitution. Therefore, the executive decision contained in G.O.(P).45 does not run against the statutory rules. The argument that the statutory rules have not been amended would lie only in a situation where the executive decision of the Government runs contrary to the existing rule. So much so, that argument does not stand. The benefit envisaged by the Government and brought out as an executive order as per the G.O.(P).45, engrafting its policy, is something that enlarges the benefits available under the statutory rules issued under Article 309.

Therefore, notwithstanding the fact that the statutory rules are yet to be amended, the beneficiaries of the decision of the Government contained in G.O.(P).45, are entitled to enjoy that. This is because, it is an executive decision of the Government and the entitlement of a citizen, particularly that of a Government servant to enjoy the fruits of that decision does not depend upon any further legislation or quazi legislative exercise that has to be drilled out for the purpose of putting the policy decision in a statutory form. It is also impermissible for the Government to contend that the Director of Health Services, notwithstanding the directions contained in the last paragraph of G.O.(P).45 issued in February, 1997, is yet to take appropriate action for amendment of the statutory rules. Therefore, the argument of the Government on this ground fails.

8. For the aforesaid reasons, this writ petition succeeds.

The petitioner is entitled to reimbursement of the entire amount claimed by her. It is so declared.

9. In the result, the first respondent is directed to pay to the petitioner an amount of Rs.55,000/- within an outer limit of three months from the date of receipt of a copy of this judgment. Interest portion is refused since the petitioner was extended the interest-free loan for the purpose of the surgery.

The writ petition is allowed as above.

Sd/-
THOTTATHIL B. RADHAKRISHNAN,
JUDGE.

Sha/-

-true copy-

P.S.to Judge.

THOTTATHIL B. RADHAKRISHNAN, J.

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O.P.No.12457 of 2002-G

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JUDGMENT

Dated: 4th September, 2007.